

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EJ MCELROY,

Plaintiff,

v.

S. GATES, *et al.*,

Defendants.

No. 1:21-cv-00053-NONE-EPG (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS RECOMMENDING  
THAT PLAINTIFF'S MOTION TO  
PROCEED IN FORMA PAUPERIS BE  
DENIED AND THAT PLAINTIFF BE  
DIRECTED TO PAY \$402 FILING FEE

(Doc. Nos. 3, 4)

Plaintiff EJ McElroy is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff's complaint against defendants alleging multiple violations of plaintiff's constitutional rights. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 14, 2021, the assigned magistrate judge issued findings and recommendations recommending that plaintiff be required to pay the \$402 filing fee because he has previously suffered three strike dismissals of civil actions rendering him ineligible to proceed *in forma pauperis*. (Doc. No. 3.) Those findings and recommendations were served on the plaintiff and contained notice that any objections thereto were to be filed within twenty (20) days after service. (*Id.* at 4–5.) No objections have been filed, and the deadline to do so has expired. Subsequently, plaintiff filed a motion to proceed *in forma pauperis* and a petition for a writ of habeas corpus,

1 which the court construes as a first amended complaint. (Doc. Nos. 4, 5.) The first amended  
2 complaint, however, does not allege any facts demonstrating that plaintiff is in imminent danger  
3 of serious physical injury or was so at the time he initiated this action.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
5 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the  
6 magistrate judge's findings and recommendations are supported by the record and by proper  
7 analysis.

8 Accordingly,

- 9 1. The findings and recommendations issued on January 14, 2021 (Doc. No. 3), are  
10 adopted in full;
- 11 2. Plaintiff's application to proceed *in forma pauperis* (Doc. No. 4) is denied;
- 12 3. Pursuant to 28 U.S.C. § 1915(g), plaintiff is not allowed to proceed *in forma pauperis*  
13 in this action; and
- 14 4. Plaintiff shall pay the \$402 filing fee in full within thirty (30) days of the date of  
15 service of this order if he wishes to proceed with this action.

16 IT IS SO ORDERED.

17 Dated: **March 29, 2021**

18   
UNITED STATES DISTRICT JUDGE